UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

JERRY LITWIN,

Plaintiff,

v. 10 CV 9609 (JSR)

CHASE BANK,

Defendant.

----------x

New York, N.Y.
April 28, 2011
4:30 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

BROMBERG LAW OFFICE
Attorneys for Plaintiff
BY: BRIAN LEWIS BROMBERG
MICHAEL N. LITROWNIK
-and-
LAW OFFICE OF HARLEY J. SCHNALL
Attorneys for Plaintiff
BY: HARLEY J. SCHNALL

WILMER CUTLER PICKERING HALE & DORR
Attorneys for Defendant
BY: NOAH LEVINE
JAMIE DYCUS

(In open court)

THE DEPUTY CLERK: Will the parties please identify themselves for the record.

MR. BROMBERG: Brian L. Bromberg, Bromberg Law Office PC for the plaintiff. I have with me my associate Michael Litrownik who has not yet been admitted to this court. He just started working with me last week. I hope it's all right if he sits up here.

THE COURT: Sure.

MR. SCHNALL: Harley Schnall also for plaintiff.

MR. LEVINE: Noah Levine from the law firm Wilmer Hale, and I have with me Jaime Dycus.

THE COURT: Good afternoon. We're here on the motion to dismiss. Let me hear first from moving counsel.

MR. LEVINE: Thank you, your Honor. We submit that the first amended complaint should be dismissed for two reasons. On the liability question, the complaint does not state a claim for a violation of any provision of the Truth in Lending Act or Regulation Z, and on the remedy question the complaint does not state a claim for any legally valid form of relief.

I'll discuss each of those points. The first point is that there is not any claim stated for a violation of Regulation Z or the Truth in Lending Act. I'll cut right to the heart of the matter. The liability issue in this case is a

simple one. Plaintiff alleges that a disclosure that appeared on his periodic statement is inconsistent with legal obligations that Chase had to him, and for that reason, he alleges that it violates 12 CFR 226.5(c), which is a provision of Regulation Z under the Truth in Lending Act that states that disclosures must reflect the terms of the legal obligations between the parties. Here, the legal obligation that's at issue is Regulation Z's requirement that a creditor, quote, adopt reasonable procedures designed to ensure that periodic statements are mailed at least 21 days prior to the date on which any agrees period expires. And that can be found at 226.5(b)(2) -- it's changed the numbers, but could be found under 226.5(b)(2).

Just so you know, a grace period is the time within which a cardholder can repay their balance --

THE COURT: I understand. So if you look at the statement, for example, the Exhibit A to the first amended complaint, so it says payment due date January 22, 2010. And then if you go to the description of grace period on the next page, it says grace period at least 20 days. And they're saying it should say grace period at least 21 days, yes?

MR. LEVINE: That is their argument, your Honor.

THE COURT: What's wrong with that?

MR. LEVINE: Our argument is that there's two problems with that argument. First of all, the Truth in Lending Act and

Regulation Z has a very specific regulation about how you disclose a grace period. You disclose it by disclosing the date on which the payment is due. They need to know when to send their payment in. They don't need to be getting in when does the 20 days start, when does it run from. And this statement, both statements clearly do that. January 22, February 22. And as the plaintiff admits in their opposition --

THE COURT: Which is more than 21 days.

MR. LEVINE: You got to my next point. It's 25 days here from the closing of the cycle. The cycle close --

THE COURT: The likelihood that anyone ever read any of the boilerplate on the second page blinks reality. If you tried to read it, you would have to blink a lot because your eyes would be easily worn out. So, all right. So I understand all that.

Anything else you wanted to say?

MR. LEVINE: One other point on that as well. Which is even if -- your point was it blinks reality that someone would read it. Even if you do, there is nothing inconsistent with saying that a period is at least 20 days and it being 21 days. I know this would be a different case if the only thing that we told the cardholder -- we didn't tell them a due date or anything, we just said your grace period is at least 20 days. I pick when you are going to send the check in. I get

that. But here the plaintiff admits that by our due date we disclose grace periods that were 25 days on each of these statements. That's entirely consistent with saying at least 20 days, that's entirely consistent with the legal obligation that's in 226.5.

That's all I would say on that first theory. I think that they recognize there was a problem with that because the night before the response to our motion to dismiss was due, we got an amended complaint, and it has a new wrinkle to the theory now. That wrinkle to the theory is that another disclosure on the periodic statement is inconsistent with our legal obligations. That legal obligation is an obligation that took effect on February 22, 2010, under Regulation Z. There was a new regulation that said if you are going to have a cutoff time for when you will credit a payment received on that day, it has to be at least 5 o'clock. It can't be anything earlier. And they point to the disclosure on one of these statements, just the second statement that's attached to Exhibit A, and say the due date was as late as February 22 which was that first day of effectiveness and you said that your cutoff time was 1 p.m. so that's inconsistent between the two things. Well, the problem is that this periodic statement on which this claim is based went out well before February 22, and there is nothing in Regulation Z that says we have an obligation to disclose a future change in the law or what the

law will be. And to the extent there is any doubt about that, the commentary to 226.5(c), which we quote in our reply brief, is very clear on that.

THE COURT: I don't need to hear that.

MR. LEVINE: Okay.

THE COURT: So, all right. Why don't we, before we get to your argument about remedy, let me hear from plaintiff's counsel on liability.

MR. LEVINE: Thank you, your Honor.

THE COURT: Someone want to talk from plaintiff's counsel?

MR. SCHNALL: I'm sorry. Thank you, your Honor. Mr. Litwin here, our client, Chase has a number of responsibilities to credit consumers like Mr. Litwin. And the application process at the account opening process, at the time of sending periodic statements, and any other disclosures it makes subsequent to account opening. The bank is required to provide a certain set of disclosures to its customers. Now, Congress authorized the Federal Reserve Board to implement --

THE COURT: Please don't give me the history of the world. The argument that your adversary just advanced was, first, the payment due date on both of these statements is more than 21 days after the close of the statement. So it complies with the law. And that boldface date stated right at the top of the statement is self-evidently, they would say, total

disclosure to the customer that if you pay by this date, you're fine. And there won't be charges if you pay by that date. Which, the date stated is actually more than the law requires.

So, whatever quibbles there might be about this four words in-parentheses deep in the legal gobbledygook that is part of page two of this statement, couldn't possibly be misleading to any reasonable customer.

So let me stop there. Why isn't that right?

MR. SCHNALL: Well, your Honor, the question is not whether it's misleading or not to the customer. The question is, does the lender -- did the lender violate the regulations as set forth by the board. Now Congress authorized --

THE COURT: How did they violate it?

MR. SCHNALL: Well, Congress authorized the board to promulgate regulations to help implement that act, and one of the regulations was 226.5(c) which stated that the lender must at all times disclose the legal obligations of the parties. So, even if in one place the lender correctly disclosed the legal obligations of the parties, on another place in another disclosure on the back of the periodic statement, it said that the grace period was generally at least 20 days, and I think even Chase would concede that that disclosure did not represent their legal obligation.

THE COURT: You're saying that it should have read at least 21 days.

MR. SCHNALL: Well, whatever the correct period was.

THE COURT: What do you say the correct period was?

MR. SCHNALL: It may have been 25 days.

THE COURT: No. Wait. Excuse me. You don't know what it is?

MR. SCHNALL: At this point we do not, your Honor, know what the grace period was. But we know it could not have been 20 days.

THE COURT: How can you say that there was a violation when you don't even know what the law that you're asserting they violated required at that time?

MR. SCHNALL: Because there was the amendment to the Truth in Lending Act in 2009 that changed the timing of grace periods, that required grace periods to be at least 21 days.

THE COURT: What was required at the time of this statement? The end of the first statement is end of December 2009, and the second statement is beginning of -- is January 2010.

So, what is your position as to what the law required at that time?

MR. SCHNALL: At the very least the law required -- they could have simply disclosed the grace period --

THE COURT: I'm not getting an answer to my question.

MR. SCHNALL: I'm sorry. They could have --

THE COURT: I'm not getting an answer to my question.

MR. SCHNALL: At least 21 days would be the minimum requirement.

THE COURT: So you're saying that there was a violation of law because way down here in this boilerplate that I think common sense suggests no one reads, and of course under the Supreme Court's mandate of Iqbal and Twombly, I am required on a motion to dismiss to apply common sense, a radical change from previous law. But assuming arguendo that someone read that, they would be misinformed in a wholly immaterial and irrelevant way because the payment due date, the only thing any reasonable cardholder would possibly care about, was 25 days.

Is that your position?

MR. SCHNALL: No. Your Honor, we would submit that what Chase did here was -- what they did was disclose a term that did not reflect the legal obligation of the parties. Irrespective of whether a consumer may read this or not, there are lots of items on the back of this statement --

THE COURT: Excuse me. Maybe I'm missing what you think is the relevant legal standard here. If some law required in my hypothetical Chase to say on its disclosure in connection with a credit card, these requirements do not apply in Germany and France. You think that someone from the United States could bring a cause of action in those circumstances?

MR. SCHNALL: No, your Honor. That's not what I'm saying here.

THE COURT: So I agree with you. So let's assume that in a different hypothetical, that the regulations said if you send your payment by the mail, the grace period is extended, in my hypothetical, by two days. But Chase said in its mistaken form in my hypothetical, if you send your check by mail, your payment by mail, your grace period is extended one day. But, the due date was further down the road, so if you send it by mail on the due date, in my hypothetical, it would be 100 days after the actual grace period. So, Chase in its due date was saying we don't care if it's one day, two days or 100 days, we'll still credit your payment.

You say that someone could bring an action because it said you only get one day if you send it by mail, rather than two days, even though the actual arrangement that Chase had arranged by the due date meant if you send it by mail and it even took 100 days -- that's approximately how long it takes mail to get from one chamber to another in the Southern District of New York courthouse on a good day -- that that would be a violation. How could that possibly be the law?

MR. SCHNALL: What we're saying here if Chase recites a term of law that's contrary to law --

THE COURT: You say "gotcha" even though there's no conceivable harm given the due date.

MR. SCHNALL: The harm is not -- the harm is not making the proper disclosure to a customer.

THE COURT: That's why I gave my much more --

MR. SCHNALL: If I'm --

THE COURT: So let's just say there was a typo. Let's just say, for example, they have this whole business in here about that you can't make payment on December 25. It is not a Christian thing to do. And if instead by mistake they put December 24, and the law in my hypothetical require them to say December 25, would you say, even though you would be unable to cite any individual case, including that of your own plaintiff, where anyone was actually harmed by that, but your position is it is a free floating violation in and of itself.

MR. SCHNALL: Under the strict liability regime of the Truth in Lending Act, any sort of disclosure that does not reflect the legal obligations --

THE COURT: Strict liability means you don't have to have intent. You still have to have harm. Do you not?

MR. SCHNALL: The harm is in not making the proper disclosure. Making a deficient disclosure.

THE COURT: That's the harm I just hypothesized. You are informed in fact that your payment is due on a date that complies with both 20 days, 21 days, and 25 days under any of the versions of the law. But we disregard that, says you, we don't want to deal with the actual date that the bank told the customers that was due because there is this free floating, abstract, totally immaterial constructive harm, but not a harm,

just a harm in the legalistic sense you're positing, that you somehow made a mistake in the number of days you put under the grace period. How could that be the law?

MR. SCHNALL: Well, the grace period disclosure that Chase made here doesn't just refer to the current billing period. It is a general disclosure. It refers to future billing periods as well.

THE COURT: If you had shown me a bill where the payment due date was less than 21 or even less than 25 days, that might be interesting. But you didn't sue on that basis.

MR. SCHNALL: That's correct.

THE COURT: So what about your other theory?

MR. SCHNALL: Our other theory is on the cutoff time, your Honor. Chase disclosed that the cutoff time is 1 p.m. and again, the law changed --

THE COURT: Did it change before these statements were sent to the customers?

MR. SCHNALL: Yes, it did. But the effective date was February 22 but the change in law was --

THE COURT: The effective date is when the law takes effect, right? If a law has an effective date of X, that means that you're not bound by it until day X, right? That's what effective date means.

MR. SCHNALL: Well, not necessarily in this case, your Honor.

THE COURT: Why not?

MR. SCHNALL: Because Chase here -- yes, was on the cusp of the change in the law, but the due date was February 22, on the actual date of the change. And Chase was disclosing several weeks in advance, was effectively disclosing that the customer's payment, if it arrived on February 22, after 1 p.m., it would not count as February 22, it would count as February 23. And again, that was not the legal obligation of the parties. This is not a law that emerged on February 22. It emerged in May. Chase had notice that the law was changing --

THE COURT: And the effective date of the law was when?

MR. SCHNALL: The effective date was February -- for payments made on or after February 22, any payment that arrives by 5 p.m., must be credited on the same day, on the date of receipt.

THE COURT: So the effective date was February 22?

MR. SCHNALL: Yes.

THE COURT: And so, are you saying that your plaintiff actually didn't get credit -- actually was charged interest or suffered because he or she put in -- who is the plaintiff here? I'm sorry. Jerry Litwin. Did Mr. Litwin, do you recite in your amended complaint that Mr. Litwin sent in a check that arrived after 1 p.m. and before 5 p.m. on January 22 and that

he was therefore charged interest?

MR. SCHNALL: No. Again, it is a disclosure violation.

THE COURT: It is another of your abstract claims.

MR. SCHNALL: Well --

THE COURT: How does that meet the requirements of Article III of the Constitution?

MR. SCHNALL: Well, respectfully, your Honor, we submit it is not abstract. Congress determined that these disclosures, a certain set of disclosures needed to be made, and the issue is not whether a consumer read it. It is whether the lender furnished it.

THE COURT: So, let's say that Congress decreed that there should be disclosed that if you live in Hawaii you will be given an extra grace day, and that Chase failed to notice that on in its disclosures. And then someone brings an action in New York, a New York resident brings an action in New York, saying that wasn't disclosed. I agree it has no application to me whatsoever, but it wasn't disclosed and that gives me the right to sue. Is that your position?

MR. SCHNALL: No, your Honor.

THE COURT: Why is that any different from this? What gives Mr. Litwin the right to sue on something that didn't affect him?

MR. SCHNALL: Well, it is presumed to affect the

consumer. If a consumer doesn't receive a complete set of information, it is presumed to harm them. That's what Congress has said.

THE COURT: Where do they say that?

MR. SCHNALL: Well, the purpose of the Truth in Lending Act --

THE COURT: Where did they say what you just said? They said they created a legal presumption that someone would be harmed in a case where there is not even the slightest allegation that in fact the person was harmed. Where is that? Where did Congress say we create this presumption?

MR. SCHNALL: Well, Congress provides for statutory damages even when there are no actual damages.

THE COURT: That is a different story. That of course runs through much of the law and that's because actual damages are sometimes difficult to calculate. That's the purpose of statutory damages. It is not to give standing to someone who hasn't suffered any injury at all. I have grave doubts that Congress could, even if it wanted to under Article III, create a cause of action cognizable in the federal court for someone who in fact suffered no injury. And if they did do that, they would certainly have to do it quite explicitly.

MR. SCHNALL: Well, your Honor, courts have determined that this was Congress's intent.

THE COURT: Well, show me what case are you referring

to.

MR. SCHNALL: Well, specifically, we cite in our brief DeMando v. Morris.

THE COURT: So let me pull that out. Hold on a minute. Do we have that here? Do you have a copy of that, counsel?

MR. SCHNALL: Yes.

THE COURT: Could you just hand it up for a minute. So this is a decision of the Ninth Circuit. Some might facetiously say it's therefore presumptively subject to reversal by the Supreme Court, but I won't say that. Not least because it's authored by my college mate Chief Judge Schroeder. And she says as follows: DeMando -- that's the plaintiff -- is entitled to proceed, however, with her claim that the 1997 notice of change in terms violated TILA, because the notice contained terms that were in violation of the credit agreement, the notice violated Regulation Z, and then she goes on to say DeMando has suffered the loss of a statutory right to disclosure and has therefore suffered injury in fact for purposes of Article III standing.

Now, this is a case, is it not, of complete non-disclosure, not of a mistaken disclosure?

MR. SCHNALL: No, your Honor, it was a misdisclosure.

THE COURT: Misdisclosure?

MR. SCHNALL: She had been given at one point a 10.9

APR for life, and subsequently she got a change of terms notice that said her APR was not really for life, that it was being raised to 14.9.

THE COURT: So that was either actual or threatened real harm.

MR. SCHNALL: If I may finish, your Honor. She communicated with the bank, she complained, and they restored her APR. They never, ever raised her rate. They gave her a change in terms notice that it would be effective in two months and they reversed it before that two month period elapsed.

THE COURT: But she had suffered there. It was only because she took action that they changed their position. So, she would have been entitled to some sort of compensation and that would be a good example where statutory damages would be a more practical measure than how much time and effort and so forth she had expended to get that fixed.

MR. SCHNALL: Well, perhaps she might have been entitled to actual damages in addition to statutory damages had she not complained. But --

THE COURT: Anyway, I agree with you that this case or at least the language I just read is helpful to your position. So, let me switch back to defense counsel and we'll come back to you in a minute.

What about this case?

MR. LEVINE: Sure. A couple things. First of all, I

agree with your view that you stated, your Honor, about if there is no harm. I think, well, there is a slight conceptual distinction though between saying the person wasn't harmed and saying that in fact there was no non-disclosure to the person at all. And I think this is a case where there is no non-disclosure at all. The DeMando case is an example where the court said Capital One had promised a 10.999 life APR. They disclosed to her a change of terms notice that your APR is 14.99. That was a clear violation of the rule that said the disclosures have to reflect the legal obligations of the parties.

Here, we don't have anything that says Chase disclosed that, Mr. Litwin, your grace period for these two months is going to be 20 days. What we have is two periodic statements that say your grace period is 25 days, including on the back a statement that says at least 20 days. There is nothing inconsistent between those.

THE COURT: There is nothing where it says in haec verba at least 25 days or is 25 days as you just said.

MR. LEVINE: You're right.

THE COURT: You're getting that because of the calculated difference between the end of the statement date and the due date.

MR. LEVINE: You're right. But importantly, TILA Regulation Z, actually it's both in the statute and in the

regulation says that that's the way you disclose a grace period. It says you disclose the date on which it expires so we're not -- there is nothing in the reg that says give them the total number of days. It actually says if you look in the version of the regulation that was in effect at the time these disclosures went out --

THE COURT: Anyone reading the second -- the statement that is in your disclosures about, quote, at least 20 days, could think, well, that's what the law requires, they gave me here, it's nice of them making it 25 days, but there is no guarantee of getting that in the future. All I'm entitled to as of right is 20 days, which would be not correct.

MR. LEVINE: In the periodic statement under the way the Truth in Lending Act works is not the way you inform people about their going forward terms. It is a periodic statement that is telling them about what is your grace period here. Truth in Lending has many stages of disclosures.

THE COURT: But isn't that inconsistent with the argument you just made a minute ago?

MR. LEVINE: No.

THE COURT: Your argument to me a minute ago was that in effect and you believe in the way that the law prefers, the statement said you have at least -- not at least -- you have 25 days as a grace period. That that was the impact of the actual due date. And your adversary says, well, that's all fine and

good, but that could have been not as by operation of law, all that you're telling me the person there is by our good grace, Chase's, we're going to give you 25 days. If the person wanted to know what they were entitled to as of law, they would look at this statement down in the disclosure, and they would see in bold face, no less, the reference to 20 days. So they would say, okay, that's my legal right is 20 days. Whereas their legal right is 21 days.

So, isn't that what Chase is saying to the customer is you're right?

MR. LEVINE: No.

THE COURT: No? Wait, excuse me.

MR. LEVINE: Okay.

THE COURT: Let me make sure I hear your answer correctly. Because I'm mystified by it.

MR. LEVINE: Okay.

THE COURT: Where Chase says grace period -- where is it. "Grace period (at least 20 days)" what are they conveying by those words?

MR. LEVINE: The grace period for this period, for this billing cycle, is at least 20 days. And that was the distinction.

THE COURT: And if that's what they're conveying, that's inconsistent with what the law requires.

MR. LEVINE: It is not. And if you take it in

isolation, your Honor.

THE COURT: I'll take it in isolation.

MR. LEVINE: Let's do that, I'll go with that. In isolation, had there been nothing else, you're right. Had you only told the cardholder your period is at least 20 days, we are not going to tell you anything about when your payment is due, you go by 20 days. That's what you have. But it is not in isolation. That's the issue here. And what I was trying to say before is that periodic statement disclosures under the Truth in Lending Act are for that period. That's what -- the Section 1637 of Title 15 is what has all these disclosure requirements and there are different stages. There are solicitation stage disclosures, there are account open disclosures, and there are periodic statement disclosures. The place in the Truth in Lending Act where you have to disclose the grace period is on the periodic statement, and the way you do it is by saying the date that it's due. So this disclosure right here can't be separated out from what else is on the periodic statement. It tells Mr. Litwin that you pay by January 22 or February 22 on these two statements and you have the benefit of the grace period. At least 20 days isn't inconsistent with that.

THE COURT: You're not suggesting, are you, that Chase consciously and intentionally chose to put in 20 days as opposed to it simply being a typo?

MR. LEVINE: I'm not suggesting that. What I'm suggesting is it had been that way for a while, and it did change. It did change after that. But as long as you're disclosing the due date the right way, then it doesn't -- there is nothing inconsistent. What I was going to say is I don't want to try the Court's patience with a hypothetical, but imagine a Court rule that says oppositions to motions to dismiss are due, you will have at least 20 days to respond, but in the scheduling order for Litwin v. Chase U.S.A. Bank, it says you have 25 days. No one is going to misunderstand that they have to get their brief in by 20 days. It's been disclosed.

THE COURT: If the question is could there as a practical matter be any misunderstanding here, then arguably you win hands down. But, what they're saying is there has been a misinformation conveyed that is harmless as to their client, but being lawyers that doesn't bother them one wit because they feel they have a right to a statutory cause of action. And I guess the argument is it would be like a taxpayer suit almost, which, last I checked is not normally permitted in the federal courts, that in order to assure enforcement of these disclosure obligations, we give anyone or at least any cardholder a right to bring this cause of action.

So, your argument is, if I understand it, not addressed to the fact that this was harmless, that they have

even failed to allege any harm, but that taken together, there was compliance with the disclosure requirements.

MR. LEVINE: It is both arguments, in fact, your Honor --

THE COURT: So with respect to the first of those two arguments, the lack of harm, what do you say as to this DeMando case and the language? Do you disagree with the case or are you saying it's right but it is just distinguishable?

MR. LEVINE: Two answers. I'll answer your question and then I'll explain how it relates. I do think it is not correct on that matter. I don't think that you could have someone who literally has absolutely no potential for harm whatsoever because there was no potential for non-disclosure as to that person. A good example of this, a case we cite is the Demery v. Citibank decision which was decided by Judge Baer here. It involved the same plaintiff's counsel in this case, trying to say that there was some inconsistency between a statement backer, that's what the back of this periodic statement, and something else, and he said when you put those two together, this is a tortured interpretation that borders on the absurd. No reasonable consumer would misunderstand this. In those circumstances you don't have a claim in the first instance.

That's why I think actually DeMando is actually somewhat different. There, there actually was a disclosure of

14.99 when the legal obligation of the parties was a 10.99. So in that circumstance, it is distinguishable.

THE COURT: There was an injury until they fixed --

MR. LEVINE: There was an injury -- she never was charged the 14.99 in that case, but you're right, she had to do something about it.

Our position here is the way you put it, your Honor. No reasonable consumer would look at these two things and misunderstand what the grace period was. And that's what TILA requires, is that you disclose the grace period. And what they are trying to do is say, well, TILA also requires that your disclosures reflect your legal obligations. Well, nothing here is inconsistent with the legal obligation in 226.5(b)(2) that says we have to give them 21 days.

THE COURT: All right. I know we haven't covered all the issues, but let me give plaintiff's counsel the final word before we bring this argument to a close.

MR. SCHNALL: Your Honor, the statement backer also includes a billing rights summary. Now, that's something that doesn't need to be included on the periodic statement, on the back of a periodic statement or even with it. That's something that Chase has opted to do this. A short form billing rights summary. A lender could do this short form or it could provide a long form once a year. But within this short form billing rights summary, it is disclosed that if a customer has a

billing rights issue, if there is something inaccurate, there is some fraud on the account or some other inaccuracy, we must hear from you no later than 60 days after we sent you the first bill. That conforms with Regulation Z and the Truth in Lending Act. But if Chase had written 30 days, we must hear from you no later than 30 days, we submit that even if Mr. Litwin didn't have an inaccuracy, that that's a violation of the Truth in Lending Act. He was not -- he was given a disclosure. He would have been given a disclosure that did not reflect the legal obligation of the parties.

THE COURT: Supposing it said if you think your bill is wrong, this bill, we must hear from you by no later than and they gave a date that was 65 days after the bill. And then later on they said errors or questions about your bill need to be brought to our attention within 60 days. Or 59 days. They made an error when they said 59 days, but that was preceded by a very specific date on this bill. If you find there is an error, you have to let us know by 65 days and a specific date. How could anyone be really misled by that? They would have to honor the 65 days. There would be no question about that. So in my hypothetical, the law had changed. It used to be 59 days, it was changed to 60, they forgot to fix that second part of their boilerplate. But the date they were actually giving on that bill and every other bill was 65 days.

Where is the statutory disclosure harm in that

situation?

MR. SCHNALL: Well, again, your Honor, it is the same kind of harm. It's saying, well, this month you have 65 days, but this month you have until June 5, but generally it's 59 days and that's not --

THE COURT: I'm not sure even that could be read in this case. But let's assume, let's take that. But on each and every bill in my hypothetical they give a date of 65 days and they continue with that glitch where they say 59 rather than 60, so they forgot to update to the new law, so they're one day behind. But in fact the date they give on each and every bill is more than the law requires. So where is the harm from that even from a disclosure standpoint?

MR. SCHNALL: It could reasonably confuse the customer and it tends to --

THE COURT: Into doing what?

MR. SCHNALL: It gives the prospective terms or it gives a false sense of what the real terms are of the account and what the real legal obligations are. I could provide, I mean, another situation. A foreign transaction fee. If you use your card in France or Germany, let's say that the card agreement called for a 3 percent transaction fee. And a customer was charged a 3 percent transaction fee, but on the backer Chase discloses you can be charged a 4 percent transaction fee. Now that does not reflect the legal

obligation of the parties, no one was harmed. Chase was not even required to disclose the 4 percent, what the general transaction fee is, what the terms are, but they do. And that is a violation of the Truth in Lending Act.

THE COURT: All right. Well, I thank both counsel for their very helpful arguments. I will reserve decision. I am going to, however, put everything in this case on a hold status staying everything until I issue at least a bottom line, I'll get out a bottom line certainly within the next two weeks. I don't know if I'll get out an opinion that quickly, but I'll give you a bottom line and we can see where we go from there. All right? Thanks very much.

o0o